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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/976,182 | 10/11/2001 | Takaaki Shimada | SHC0152 | 1938 |

7590

12/04/2003

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| EXAMINER |
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ANDERSON, CATHARINE L

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 12/04/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,182

Applicant(s)

SHIMADA ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5 September 2003 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (5,749,865).

Yamamoto discloses a disposable pull-on undergarment, as shown in figure 1, comprising a liquid pervious topsheet 10, a liquid impervious backsheet 11, and a liquid absorbent core 12. The undergarment has front and rear waist-encircling regions 17 and 18, a crotch region 19, a waist opening 21, and a pair of leg openings 22. The front and rear waist-encircling regions 17 and 18 comprise a first elasticized zone 28a and a second elasticized zone 28b. The first and second elasticized zones 28a and 28b have heights that extend in the longitudinal direction of the undergarment. The heights of the

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first and second elasticized zones 28a and 28b both extend the length of the undergarment in the waist encircling direction, and are therefore substantially coextensive along the waist-encircling direction, as shown in figure 1. The tensile stress of the first elasticized zone 28a is greater than the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

With respect to claim 2, waist elastic members 29 extend in the waist-encircling direction, as shown in figure 1. A plurality of auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the first and second elasticized zones 28a and 28b. The auxiliary elastic members 30 are located between the waist elastic members 29 and the leg openings 22, as shown in figure 2. The tensile strength of the elastic members comprising the first elasticized zone 28a is greater than that of the elastic members comprising the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

With respect to claim 3, waist elastic members 29 extend in the waist-encircling direction, as shown in figure 1. A plurality of first auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the first elasticized zones 28a, and a plurality of second auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the second elasticized zones 28b. The auxiliary elastic members 30 are located between the waist elastic members 29 and the leg openings 22, as shown in figure 2. The tensile strength of the first elastic members comprising the first elasticized zone 28a is greater than that

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of the second elastic members comprising the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

With respect to claim 5, the first elasticized zones may be defined as exclusively the portions of elastic members 28s that extend between the side edges and the sidge edge of the absorbent core. Likewise, the second elasticized zone may be defined as exclusively the portion of elastic members 28b extending between the side edges of the absorbent core. The first and second elasticized zones are adjacent, or nearby, each other in the waist-encircling direction.

With respect to claim 6, waist elastic members 29 extend in the waist-encircling direction, as shown in figure 1. A plurality of auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the first and second elasticized zones 28a and 28b. The auxiliary elastic members 30 are located between the waist elastic members 29 and the leg openings 22, as shown in figure 2. The tensile strength of the elastic members comprising the first elasticized zone 28a is greater than that of the elastic members comprising the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

With respect to claim 7, waist elastic members 29 extend in the waist-encircling direction, as shown in figure 1. A plurality of first auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the first elasticized zones 28a, and a plurality of second auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the second elasticized zones 28b. The auxiliary elastic members 30 are located between the waist

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elastic members 29 and the leg openings 22, as shown in figure 2. The tensile strength of the first elastic members comprising the first elasticized zone 28a is greater than that of the second elastic members comprising the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (5,749,865).

Yamamoto discloses all aspects of the claimed invention but remains silent as to the exact elongation stress values of the first and second elasticized zones 28a and 28b. Yamamoto discloses the elongation stress of the second elasticized zone 28b is 5 to 85% of the elongation stress of the first elasticized zone 28a, as described in column 4, lines 45-47. It would have been obvious to one of ordinary skill in the art at the time of invention to make the first elasticized zone 28a with an elongation stress of 0.2 – 2.0 N/25mm and the second elasticized zone 28b with an elongation stress of 0.1 – 0.6 N/25mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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Response to Arguments

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

With respect to claim 1, the first and second elasticized zones each

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CLA
cla
November 19, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700